

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL A. MCGUIRE,)
)
 Plaintiff,)
)
 v.) CASE NO. 2:11-CV-1027-WKW
) (WO)
 LUTHER STRANGE, *et al.*,)
)
 Defendants.)

ORDER

Before the court is Plaintiff's motion for attorney's fees and nontaxable costs. (Doc. # 285.) Also before the court is Plaintiff's motion to strike Defendant Strange's objections to documents submitted in support of Plaintiff's motion for attorney's fees. (Doc. # 346.)

This case is currently pending on appeal before the Eleventh Circuit. The filing of a notice of appeal does not deprive this court of jurisdiction to consider the motion for attorney's fees. Fed. R. Civ. P. 58(e) ("Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees."); *Gordon v. Heimann*, 715 F.2d 531, 535 (11th Cir. 1983) ("Because under the statute attorneys' fees can only be awarded to prevailing parties, attorneys' fees under section 1988 will usually be sought only after litigation.").

However, the court has discretion to deny a motion for attorney's fees without prejudice with leave to re-file after the appeal has concluded. *See* Fed. R. Civ. P. 54(d) advisory committee's note ("If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing . . . a new period for filing after the appeal has been resolved."); *Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004) (holding that a district court acted within its discretion by denying an attorney's fee motion without prejudice to renew the motion after disposition of a pending appeal on the merits).

To efficiently manage this case, avoid piecemeal adjudication of issues pertaining to attorney's fees and costs, and conserve judicial resources, the court determines that justice would be best served by denying the motion for attorney's fees without prejudice and with leave to re-file the motion after the conclusion of the appeal. Further, in light of the significant disputes between the parties concerning matters that are wholly collateral to the merits of the pending appeal, resolution of the motion for attorney's fees at this time is unlikely to contribute to more efficient resolution of the case before the Eleventh Circuit Court of Appeals.

Accordingly, the motion for attorney's fees (Doc. # 285) is DENIED without prejudice and with leave to re-file **no later than fourteen days after entry of the mandate** by the Court of Appeals on the pending appeal.

Further, the motion to strike (Doc. # 346) is DENIED as moot.

DONE this 27th day of August, 2015.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE